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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,139	06/27/2003	Joerg Stroka	25498	5141

7590 10/21/2004

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EXAMINER
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FAYYAZ, NASHMIYA SAQIB

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/607,139

**Applicant(s)**

STROKA, JOERG

**Examiner**

Nashmiya S. Fayyaz

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/26/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rossabi et al (U.S. Patent # 5,889,217). As to claim 1, Rossabi et al disclose a sampler comprising a head portion 16 with chamber 33 with intake opening 31 covered with grid 17/23, a duct 55, a collecting device 71, a suction device 73, see Figs. 1-2 and col. 4, lines 34 et seq. Please note that the intended usage clause of sampling “bulk food” has not been afforded the effect of a distinguishing limitation as the body of the claim fails to draw life or breadth from such clause. Also note the designations of “front” and “rear” end are merely user defined and do not afford distinguishing limitations.

3. Claims 1, 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Lesage et al (U.S. Patent # 4,961,916). As to claims 1, 3 and 7, Lesage et al disclose a sampling device including a head portion 2 with a chamber (unnumbered), intake opening 3 with grid 5a covering the opening, a duct 4, collecting device 5c/5b “connecting” to the duct, a suction device 7 leading to a pump, see Figs. 1-2. Please note that the intended usage clause of sampling “bulk food” has not been afforded the effect of a distinguishing limitation as the body of the claim fails to draw life or breadth

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from such clause. As to claim 3, note that the user depicted in Fig.2 causes vibration and therefore is capable of being designated the "vibrating" means.

4. Claims 1, 3-6, are rejected under 35 U.S.C. 102(b) as being anticipated by Kerfoot- U.S. Patent # 4,804,050. As to claims 1, Kerfoot discloses a sampler including a head portion 26 with chamber 27, intake opening 28 with grid 60, duct 30, collecting device 40, suction pump (not shown, but referred to in col. 6, lines 47-57), see Figs. 1-15, notably fig.12 and col.4, lines 15 et seq. Please note that the intended usage clause of sampling "bulk food" has not been afforded the effect of a distinguishing limitation as the body of the claim fails to draw life or breadth from such clause and further it is noted that the Kerfoot device is also capable of performing the intended usage, as well. As to claim 3, note that the user depicted in Fig.1 causes vibration and therefore is capable of being designated the "vibrating" means. As to claims 4-6, note the shape of point 24.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, and 7-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Kerfoot. As to claim 2, the size of the mesh screen is not given a specific range.

However, it is believed that it would have been obvious to one of ordinary skill in the art

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at the time of the invention to have determined the proper size mesh necessary given the type and size of material being sampled. As to claims 7-8, Kerfoot lacks a specific teaching for a filter or electrostatic collection devices. However, Kerfoot does indicate that the sample is connected to a conventional vapor/liquid detector analyzer. Since such devices are known to include filters and electrostatic type analyzers, it would have been obvious to one of ordinary skill in the art at the time of the invention to have designated the analyzer as including a filter or being electrostatic.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.


8. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 1, the preamble refers to sampling of bulk food, however, the body of the claim lacks any reference to sampling or sampling of bulk food, rendering the claim incomplete.

9. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone number is 571-272-2192. The examiner can normally be reached on Mondays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NFayyaz  
Examiner  
Art Unit 2856

nf  
10/12/04